

REMARKS

The Office action rejected pending claims 1-7 and 20 under 35 U.S.C. § 102(e) and claims 8 and 18 under 35 U.S.C. § 103(a). The Office Action objected to claim 9 and for an informality and to the Abstract for having certain phrases. The action also objected to claims 9-13 and 19 as being dependent upon a rejected claim, but stated claims 9-13 and 19 would be allowable if rewritten in independent form including the base claim and all intervening claims. Claims 14-17 were withdrawn and claims 1-13 and 18-24 are pending in this application. Claims 1, 7 and 21 are the only independent claims.

Generally, the present invention as set forth in the pending claims relates to a truck chassis configuration including at least two frame rails and an intermediate rail connecting the at least two frame rails. The chassis configuration further including a forward wheel assembly and a rearward wheel assembly and an engine positioned adjacent the forward wheel assembly and attached to the two frame rails such that at most only ten percent of the engine height extends above a top of the chassis frame rails.

Objection of Claim 9 for informality:

The Office Action objects to claim 9 because of an informality. Specifically, the Office Action States the term "its" should be changed to "a". Applicant has amended claim 9 to include this correction and respectfully request the removal of this objection of claim 9.

Objection of Abstract:

The Office Action objects to the Abstract stating that the phrase "the invention is" and "the present invention provides" should be deleted. Applicant has amended the Abstract to remove these phrases and respectfully requests the removal of the objection to the Abstract.

Rejection Under 35 U.S.C. § 102(e):

The Office Action rejects claims 1-7 and 20 under 35 U.S.C § 102(e) as being anticipated by Gaspard, II et al. (6,336,676). Specifically, the Office Action states that Gaspard, II et al. disclose a powertrain for a truck chassis comprising a chassis having at least two frame rails, at least one intermediate cross member, a forward wheel attached to a forward region and a rearward wheel and an engine positioned between and attached to the two chassis frame rails. Further the action states that Gaspard, II et al. disclose the engine positionable at any suitable position in order to provide the requisite power to a drive axle and therefore an overall engine height can be extended at most only ten percent above a top pf the chassis frame rails.

Gaspard, II et al. disclose a vehicle having a passenger area and a freight area and the vehicle is supported by a truck frame. An engine is positioned under the rear portion of the freight area between a forward region and rearward region. The forward region is defined by the ground clearance height and a vehicle height and the rearward region is defined by the departure angle and the vehicle height. In one embodiment of Gaspard, II et al., the engine is positioned substantially at a center location relative to

the length of the vehicle (figure 3) and in another embodiment the engine is positioned at the rear of the vehicle behind the rear wheel assembly.

Independent claims 1 and 7, as amended, include the requirement that the engine is positioned adjacent the forward wheel assembly and attached to two frame rails. In contrast, Gaspard, II et al. disclose the engine positioned at a center location in one embodiment and at the rear of the vehicle in another embodiment. Gaspard, II et al. do not disclose or suggest the possibility of mounting the engine adjacent the forward wheel assembly as required by claims 1 and 7, as amended. In fact, Gaspard, II et al. do not disclose the space required to place the engine adjacent the forward wheel assembly (figures 8(a) and 8(c)). The configuration of the driver and passenger areas would not permit the positioning of the engine and supporting components. Thus, there is no discussion or disclosure in Gaspard, II et al. to suggest that an engine could be mounted in the forward area of the vehicle adjacent the front wheel assembly as required in claims 1 and 7, as amended, in the present invention.

Therefore, Applicant respectfully submits that claim 1, as amended and claim 7, as amended are patentable for the reasons set forth above, as are the claims which depend from those claims, dependent claims 2-6 and dependent claims 8-13 and 18-20. Applicant request removal of the objection to all of these claims under 35 U.S.C. § 102(e).

Rejection of Claim 8 under 35 U.S.C. 103(b):

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The Office Action rejects claim 8 under 35 U.S.C. § 103(b) as being unpatentable over Gaspard, II et al. (6,336,676) as applied to claim 7 and in view of Georgoulis (6,062,716). Specifically, the Office Action states that Gaspard, II et al. disclose the chassis frame rails, but fail to show a cooling system, but that Georgoulis teaches a front-end truck having a cooling system with a radiator disposed between the chassis frame rails. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the powertrain configuration for a truck chassis in Gaspard, II et al. with the cooling system taught by Georgoulis.

Georgoulis discloses a front end concrete mixer truck having frame rails spaced a distance apart that is greater than 34 inches and a front and rear end and an engine mounted to the chassis at a mid point between the front and rear end. Further, Georgoulis discloses a radiator positioned on the chassis and forward of the engine. Georgoulis does not disclose a cooling system mounted between the frame rails as required by claim 8 in the present invention. In addition, there is no suggestion or motivation in either Georgoulis or Gaspard, II et al. to combine the powertrain configuration of Gaspard, II et al. with the cooling system of Georgoulis. Therefore, Applicant respectfully submits that for the reasons set forth above, examiner has not met the burden of establishing a prima facie case of obviousness as required by the Manual of Patent Examiners (MPEP). The MPEP Section 2142 states the burden for establishing a prima facie case of obviousness as follows:

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

There is no suggestion or motivation within the prior art of record to combine the references. Furthermore, neither of the references, alone or in combination, suggest or teach all claim limitations. Accordingly, Applicant submits that claim 8 is patentable for the reasons set forth above.

Further, claim 8 is dependent on claim 7, which has been amended to be in patentable form as discussed above. Therefore, since claim 7 is patentable, dependent claim 8 is also patentable. For the reasons set forth above, Applicant respectfully request that the rejection of claim 8 under 35 U.S.C. § 103(a) be removed.

Rejection of Claim 18 under 35 U.S.C. § 103(a):

The Office action rejects claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Gaspard et al. (6,336,676) as applied to claim 7 and in view of Shearn et al. (5,499,690). Specifically, the Office Action states that Gaspard, II et al. disclose the chassis frame rails, but fail to show a cooling system mounted outside the chassis frame rails. The action states Shearn et al. disclose a cooling system mounted outside the chassis frame rails and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the powertrain configuration for a truck chassis of Gaspard, II et al. with the cooling system of Shearn et al.

Shearn et al. disclose an integral hood, radiator and bumper support apparatus connected to a radiator support tube, which is coupled to the movement of the chassis frame rails. The radiator is connected to the radiator support tube, which is connected to the frame rails such that movement of the radiator support tube is permitted independent of the position of each frame rail.

Neither Gaspard, II et al. nor Shearn et al. disclose any suggestion or motivation to combine the two references. Accordingly, the burden of establishing a prima facie case of obviousness has not been established per MPEP Section 2142 as stated above. Further, claim 18 is dependent on claim 7, which has been amended to be in patentable form as discussed above. Therefore, since claim 7 is patentable, dependent claim 18 is also patentable. For the reasons set forth above, Applicant respectfully request that the rejection of claim 18 under 35 U.S.C. § 103(a) be removed.

Allowable Subject Matter:

The Office Action states that claims 9-13 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and intervening claims. Claims 9-13 and 19 depend from claim 7, which has been amended to be in patentable form as discussed above. Therefore, since claim 7 is patentable, dependent claims 9-13 and 19 are also patentable. For the reasons set forth, Applicant respectfully request that the objection of claims 9-13 and 19 be removed.

Applicant appreciates the allowance of claims 9-13 and 19 if rewritten in independent form as stated above. Therefor , Applicant has added new claim 21, which includes the limitations of original claim 9 and the original base claim and intervening claim for which claim 9 depended from. Applicant respectfully request allowance of new claim 21 and the new claims that depend from claim 21 (claims 22-24).

Conclusion

Accordingly, Applicant submits that independent claims 1 and 7, as amended, and new claim 21 are patentable for the reasons set forth above, as are the claims which depend from these independent claims (dependent claims 2-6 and 20, and dependent claims 8-13 and 19 and 22-24). Applicant respectfully request all rejections be withdrawn, and that all claims pending 1-13 and 18-24 be allowed.

Examiner noted that the prior art of record was considered pertinent to Applicant's disclosure. Applicant has reviewed the prior art of record and contends they do not adversely bear on the patentability of the pending claims.

In light of the foregoing, Applicant respectfully submits that each item set forth in the Office Action dated July 31, 2003 has been addressed. Further, Applicant submits that all claims are now in condition for allowance and respectfully request such allowance.

In the event any further matters requiring attention are noted by the Examiner or in the event that prosecution of this application can otherwise be advanced thereby, a

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telephone call to Applicant's undersigned representative at the number shown below is invited.

Respectfully submitted,

Dated: _____

By: _____
John M. Naber
Registration No. 46,487

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John M. Naber

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